

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

FILED

FEB 27 2015

[Signature]
CLERK

JOSEPH E. LEICHTNAM,

Plaintiff,

vs.

AMERICAN ZURICH INSURANCE
COMPANY, ZURICH AMERICAN
INSURANCE COMPANY, and ZURICH
NORTH AMERICA,

Defendants.

CASE NO. 15-5012

COMPLAINT

COMES NOW, Plaintiff by and through his attorneys, and hereby states as follows:

PARTIES

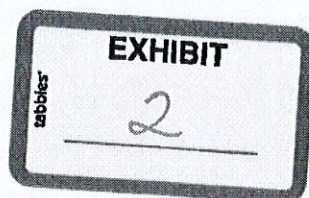
1. Plaintiff is a resident of Rapid City, South Dakota.
2. Defendants are incorporated or have their principal place of business in a state other than South Dakota.
3. Defendants, hereinafter Zurich, are alter egos or instrumentalities of each other and either committed or aided and abetted the acts hereinafter alleged.

JURISDICTION

4. The amount in controversy exceeds \$75,000.
5. Jurisdiction herein is based on 28 U.S.C. § 1332, Diversity of Citizenship.

FACTUAL SUMMARY

6. Plaintiff worked for Rommesmo Companies d/b/a Dakota Steel & Supply, Inc., from May, 2001 until April 6, 2009.
7. Defendants (hereafter Zurich) provided workers' compensation insurance



ZURICH(2) 002983

coverage for Plaintiff's employer.

8. On August 29, 2007, Plaintiff injured his head, neck, and low back when he fell off a forklift and landed on the back of his head, neck, and back.

9. Plaintiff sought medical care and incurred medical expenses as a result of the work related injury.

10. Plaintiff continued to have headaches, neck and back pain and lumbar and cervical MRIs eventually showed a disk herniation at L5-S1 and marked right sided facet arthropathy at C3-4, C4-5 and C5-6.

11. On July 17, 2008, Defendants Zurich arranged to have Plaintiff see Dr. Wayne Anderson, an occupational medicine specialist. Dr. Anderson opined that Plaintiff's work injury was a major contributing cause of his L5 radiculopathy, his low back pain, his headaches, and his neck pain and assigned permanent impairments for the neck and low back injuries.

12. On May 16, 2009, Defendants Zurich arranged to have Plaintiff see Dr. Farnham. Dr. Farnham is not board certified in occupational medicine, having failed the examination on several occasions, and doesn't treat patients. He is widely known as regularly and routinely providing opinions to insurance companies that reduce the insurer's claim payments.

13. Dr. Farnham predictably provided a report saying that Plaintiff's injury did not cause anything other than some "post concussion headaches early on."

14. On June 4, 2009, following Dr. Farnham's report, Defendants Zurich discontinued payment for any appointments or medication that resulted from Plaintiff's injury.

15. On July 15, 2009, Plaintiff, though his attorney Dennis Finch, filed a Petition for Hearing with the Department of Labor, in part to restore his right to payment of medical bills and

prescriptions by the workers' compensation insurer.

16. On October 28, 2009, Defendants Zurich offered to settle for \$1,500 for a full, final, and complete settlement, including releasing all future medical expenses.

17. Plaintiff declined the settlement offer.

18. In May of 2012, Defendants Zurich agreed to pay for a doctor's visit with Dr. Lawlor for treatment of Plaintiff's neck condition, back condition, and headaches.

19. Plaintiff saw Dr. Lawlor on June 20, 2012 and Lawlor prescribed medications, physical therapy, an orthotic, and an inversion table. Defendants Zurich refused to pay for the medications, orthotic and inversion table for many months.

20. In early June 2013, the parties reached a settlement, in which Defendants Zurich agreed to retract their denial of medical treatments and pay for future medical expenses for Plaintiff's neck and back condition and headaches.

21. On June 7, 2013, Defendants Zurich sent a settlement agreement for Plaintiff to sign, but it wasn't what the parties had agreed on. It purported to release any claim for attorney fees and bad faith. Defendants Zurich agreed to remove the attorney fee and bad faith release.

22. On June 19, 2013, Defendants Zurich agreed to pay for future medical expenses for Plaintiff's neck and back condition and headaches in a settlement agreement. The agreement was approved by the South Dakota Department of Labor on June 21, 2013.

23. Defendants Zurich have repeatedly denied benefits without any reasonable basis and with knowledge of lack of reasonable basis.

24. Defendants Zurich failed to conduct a reasonable investigation.

25. Upon information and belief, Defendants' conduct is part of a pattern of conduct

designed to reduce compensation to injured workers.

26. Defendants Zurich have acted with fraud, malice, and oppression, making punitive damages appropriate.

27. As a proximate result of Defendants' misconduct, Plaintiff has been harmed as follows: delay in payment of his medical expenses; delay and obstruction in his medical care; loss of use of his benefits; emotional upset, aggravation, annoyance, and embarrassment; and attorney fees and expenses that should have been unnecessary.

28. Defendants Zurich have shown a reckless disregard of Plaintiff's interests, failed to comply with the duty to perform a reasonable investigation and repeatedly withheld benefits and medical expenses without a reasonable basis, making punitive damages appropriate.

WHEREFORE, Plaintiff seeks the following relief:

1. Compensatory damages in an amount to be determined at trial.
2. Punitive damages in an amount to be determined at trial.
3. Pre-judgment interest as allowed by law.
4. Attorney's fees and costs incurred in the efforts to force Defendants Zurich to comply with its obligations.
5. Other relief as deemed appropriate and necessary by either the Court or the jury.

PLAINTIFF DEMANDS TRIAL BY JURY

Dated this 2² day of February, 2015.

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